

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP1407

Cir. Ct. No. 2017SC192

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KIM W. McCUTCHIN,

PLAINTIFF-RESPONDENT,

V.

TERRI MORROW P/K/A TERRI LAWS,

DEFENDANT-APPELLANT,

JOE LAWS,

DEFENDANT.

APPEAL from a judgment of the circuit court for Iowa County:
MARGARET MARY KOEHLER, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ Terri Morrow appeals a judgment of eviction entered against her for her failure to pay rent to her landlord, Kim McCutchin. I affirm the judgment.

¶2 McCutchin initiated an eviction action against Morrow,² based on several allegations including that Morrow was late on rent and had no money for future rent. The matter was tried to the circuit court. Morrow testified that she received her notice of termination of tenancy the day after she complained to McCutchin about mold in the attached garage. The court found that “both sides confirm that rent has not been paid for the month of June. Mr. McCutchin’s claim was that they are late on rent and that there is no money for future rent, which appears to be the case.” The judgment of eviction was entered on June 30, 2017.

¶3 Morrow argues that the circuit court erred because: (1) it did not determine whether the eviction was retaliatory, and in violation of WIS. STAT. § 704.45(1), and (2) it “ordered [Morrow] to vacate the premises on a date certain in the absence of a request for and issuance and service of a writ of restitution.”

¶4 McCutchin argues that the circuit court properly disregarded Morrow’s retaliatory eviction defense because of her undisputed failure to pay

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The complaint listed “Terri & Joe Laws” as defendants. Proper service was not made on Joe Laws and the circuit court determined that it did not have jurisdiction. McCutchin chose to proceed against Morrow.

rent, and that a writ of restitution was not required in this case or, alternatively, any harm by failing to issue a writ was harmless.³

¶5 Morrow has not filed a reply brief. A proposition asserted by a respondent on appeal and not disputed by the appellant's reply brief is taken as admitted. *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994); *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Accordingly, I take as admitted McCutchin's assertions as to why Morrow's retaliatory eviction and writ of restitution arguments fail.

¶6 Nevertheless, I have reviewed the record to determine whether there is any merit to Morrow's challenges to the judgment of eviction. I conclude there is not for the following reasons.

¶7 First, under the plain language of WIS. STAT. § 704.45(2), as Morrow herself notes, "Notwithstanding [the prohibition on retaliatory eviction], a landlord may bring an action for possession of the premises if the tenant has not paid rent" Morrow does not challenge the findings of the circuit court that she did not pay rent for the month of June and that she had no money to pay the June rent. Accordingly, her argument as to retaliation fails under the plain meaning of the statute.

³ McCutchin also argues that this appeal is moot because Morrow "vacated the premises." In her initial appellant's brief, Morrow explains why this appeal is not moot. I do not address mootness because I conclude that Morrow's challenge to the judgment of eviction fails on other grounds. See *Barrows v. American Family Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013).

¶8 Second, Morrow fails to develop an argument as to why this court should vacate the underlying judgment of eviction because the circuit court did not issue a writ of restitution. *See Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2017 WI App 15, ¶28, 374 Wis. 2d 348, 893 N.W.2d 24 (“We do not develop arguments for parties.”). Moreover, Morrow makes no claim that she was forcibly removed from the premises under circumstances calling for a writ of restitution. From what I can glean from the record, Morrow voluntarily abandoned the premises and a writ of restitution was not necessary.

CONCLUSION

¶9 For the foregoing reasons, I affirm the judgment of eviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

